

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 11-20129

Case No. 11-20066

-v-

SCOTT WILLIAM SUTHERLAND, D-1,
PATRICK MICHAEL MCKEOUN, D-4,
JEFF GARVIN SMITH, D-5/D-1,
PAUL ANTHONY DARRAH, D-6/D-2,
CARY DALE VANDIVER, D-7/D-5,
VINCENT WITORT, D-8,
DAVID RANDY DROZDOWSKI, D-17,

Defendants.

EXCERPT OF JURY TRIAL, VOLUME XXXIV
(Closing Argument of Ms. Mohsin)
BEFORE THE HONORABLE ROBERT H. CLELAND
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Tuesday, January 20, 2015

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(None Offered.)

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1 Detroit, Michigan

2 January 20, 2015

3 3:45 p.m.

4 * * *

5 MS. MOHSIN: Well, good afternoon, ladies and
6 gentlemen. It's been a long couple of months, probably more
7 than a couple of months. You, over time, have gotten to know
8 the parties, the participants, the witnesses, and a number of
9 people that have come and gone through this courtroom and
10 you've sat here silently throughout, occasionally chuckling or
11 making a comment here and there, but for the most part
12 silently.

13 It is very common for attorneys on behalf of the
14 Government and on behalf of the defense to thank jurors for the
15 service that they provide by coming here every day and
16 listening to the evidence and doing their jobs and their duty
17 as jurors to find the evidence, apply it to the law, and render
18 a fair and just verdict. But I think you've guys have gone
19 above and beyond that. So it is a great honor for me to thank
20 you for your participation and put you into the next phase of
21 this trial, the end of this trial.

22 So formally, on behalf of the United States, myself,
23 my co-counsel, and the team, thank you for your participation,
24 your listening skills, and all the things that you've done to
25 be here on time every single day.

1 It is my job now, ladies and gentlemen, to try and
2 take four months of testimony and evidence, and in a short
3 period of time, condense it in a manner that helps you when you
4 go back into that jury room to assess the information that
5 you've received, determine whether or not you find that
6 information to be credible, apply it as facts, find what the
7 facts are, apply it to the law as the judge has just instructed
8 you, and to render a fair and just verdict. And so I'm going
9 to try to do that, I'm going to endeavor to do that a little
10 bit today, and then for a little while tomorrow. So let me
11 begin and do just that.

12 The first thing I want to tell you is that at the
13 beginning of this trial, you were told that you were going to
14 become experts on outlaw motorcycle clubs. I think it's safe
15 to say that that may very well have happened over the course of
16 the last few months. And I'm going to ask you to call upon the
17 hours and hours of testimony of the number of different people
18 that you saw come in the courtroom in answering many of the
19 questions that are going to come up during the course of both
20 my conversation with you, as well as what the attorneys will
21 say to you as far as what elements have been proven and how
22 they've been proven.

23 Just by way of counting numbers, we had over 60
24 witnesses testify in this case. Twenty-two of those
25 individuals were either former members, or I think two of them

1 had been prospects. Another 11 were what's called "old
2 ladies." We had seven associates or hang-arounds. You are all
3 familiar with those terms by now. Seven citizens and 13 law
4 enforcement personnel. So that's sort of the tally. And now
5 we've got to assimilate those 60 witnesses' testimony, condense
6 it down in a way that makes sense. Let's begin.

7 The slide that you see in front of you on the screen
8 shows which defendants are at -- on trial here today. You're
9 familiar with their names. You're familiar with their
10 nicknames.

11 What I've done is I've created a chart that really
12 lists which counts apply to which defendants. You have this in
13 the form of the indictment. You've been provided this in
14 connection with the jury instructions that have been delivered
15 to you earlier by the Court. But this kind of just sums it up
16 so that it's easy to see with respect to part 1. And I'm going
17 to devote some time to all of the charges in both parts.

18 As you can see, all of the defendants are charged in
19 Count 1, the RICO conspiracy. All of the defendants are
20 charged in Count 3, the drug conspiracy. And then various
21 defendants are charged in various other offenses.

22 Just to note, one of the terms that was used both in
23 the instructions, and that I will use as well, is the
24 "conspiracy" term versus the "substantive offense" term. A
25 "conspiracy" has been described to you a lot. "Substantive

1 offense" is really just something that's not the agreement.
2 It's the actual offense itself. In other words, if someone is
3 charged, as in a moment I'll tell you, with being a felon in
4 possession of ammunition, there's no talk about agreement.
5 It's the actual possession of that ammunition that's at issue.
6 So we call those "substantive offenses."

7 There's a lot of conspiracy and substantive offense
8 interrelationships in this case. So as we go through this
9 process, sort of keep that in your mind.

10 Moving to the next slide.

11 You'll see that this is part 2. Again, it's a
12 conspiracy count and then two substantive counts. Part 2
13 relates only to three defendants: Smith, Darrah and Vandiver.
14 And again, as we go through, I'm going to be highlighting these
15 names for you, but I wanted to put it in a chart just to make
16 it a little bit clearer.

17 One of the things that the Court handed out to you
18 earlier today is a document that's entitled "Overt Acts." And
19 it has a little note at the top, "Insert after page 13, part 1,
20 Count 1 of the redacted consolidated indictment." These are
21 overt acts that relate to Count 1, the RICO conspiracy.

22 Now, the judge has gone to -- through the instructions
23 with you and has told you that overt acts are not required for
24 Count 1. And so these are not required overt acts. However,
25 what they do do is they provide you with a non-exhaustive, in

1 other words, incomplete list of certain things that happened,
2 markers in time. So for instance, the very first thing that's
3 listed on this document, "In furtherance of the conspiracy and
4 to effect the objects thereof, the defendants and their
5 co-conspirators committed and caused to be committed the
6 following overt acts, among others, in the Eastern District of
7 Michigan and elsewhere." And then it begins to list things.

8 The very first one that's listed is August 14th, 1993,
9 and it talks about William Bartell, a/k/a "Stumpy," involved in
10 the murder of Charles Isler in the Cadillac clubhouse. That's
11 sort of the first event that's listed on this document.

12 You've heard testimony about stuff that happened
13 before 1993, and you will also have heard stuff that happened
14 after the last overt act that's listed here. You will also
15 have heard a number of things in between. But when you go back
16 in that jury room and you're trying to place things perhaps in
17 chronological order in your assessment of how to look at this
18 case, hopefully this document will be of some assistance to you
19 to provide you with that sort of time map sort of a thing.

20 So again, this is something that's not -- the
21 Government is not required to prove any of these overt acts.
22 It's really just being provided to help you in the process of
23 trying to get through so much information. And if I didn't say
24 it before, it is in chronological order.

25 And the last thing I think on here, just to make it

1 perfectly clear that's listed on here anyway, is January 18th
2 of 2012, and it relates to the items that were seized from
3 David Drozdowski's residence in Fair Haven, Michigan.

4 I want to point out, too, that during the course of
5 reviewing this document, you may come across individuals that
6 are referenced by the phrase "person," and then a letter, like
7 "person A" or "person B." And a key to that is provided at the
8 end to help you understand who those individuals are.

9 Now, there is a term, again, "overt acts" and then
10 there's a term "racketeering acts." And I think that there's
11 been a lot of discussion about that in the jury instructions,
12 but I don't want you to get confused.

13 Overt acts can be legal or illegal. They can be
14 anything that's done in furtherance of some activity. And all
15 of the instructions are very specific about which charges
16 require overt acts and which don't. There's really only two
17 counts that require overt acts, but nevertheless "overt acts"
18 really means to move something forward, move the ball forward
19 toward meeting the object of the conspiracy.

20 So if I had an agreement to do something with someone,
21 let's say it was a bank robbery, for example, and I agreed
22 with, you know, another individual that I was going to commit a
23 bank robbery. We sat down, we talked about it, we agreed we're
24 going to go on Tuesday, we're going to go into this bank, and
25 before we do that, I think we should go check the bank out, we

1 should case the joint and see what it looks like, what's the
2 security like, you know, is this something we want to do.

3 Physically going to see a bank, looking in a window
4 perhaps, doing that sort of thing is perfectly legal activity.
5 However, it could be considered an overt act that was done to
6 promote and further that activity being that bank robbery. So
7 that's an "overt act." Okay?

8 A "racketeering act" is something different. A
9 "racketeering act," those are specified. And when you look at
10 the instructions, you will see, as the judge was telling you,
11 racketeering act number one, racketeering act number two, he
12 was sort of labeling them. I don't think they were included in
13 the instructions. But as he was going through them, he was
14 telling you, you know, here is obstruction of justice, and here
15 is witness tampering, and here is controlled substances. And
16 he was talking about those things and numbering them in a
17 certain way.

18 What I think you need to understand from that is those
19 are the types of activities at issue here. So when I talk
20 about, or anyone talks about a "racketeering act," we're
21 talking about one of the specified types of activities that the
22 Court has been talking to you about in the instructions, and
23 that you have a copy of. So don't get confused. Keep that
24 separate in your mind, an "overt act" from a "racketeering
25 act." Okay?

1 Now, one of the things that we had talked about -- or
2 that I had mentioned to you earlier was that your job is to
3 find what the facts are, apply it to the law that the judge has
4 given to you, and render a fair and just verdict in this case.

5 And in order for you to do that, there are going to be
6 certain tools that you're going to need, certain instructions
7 that have already been provided to you. And one of the main
8 instructions that's been given to you is to use your common
9 sense and good judgment.

10 All of you come here with a vast variety of
11 experiences in reading people, looking for truth. It doesn't
12 matter if you have seen an infomercial about some miracle diet
13 pill or whether you have had some experience with children and
14 you're trying to figure out who stole the cookie from the
15 cookie jar. We all come in here with experience in determining
16 who is telling the truth and who is not. And of course, one of
17 the things we look at is their -- is demeanor, the way the
18 person speaks, the way the person answers questions.

19 Some of the things the judge told you about already,
20 whether they are evasive, whether they are straightforward,
21 whether their story makes sense, those are all things that you
22 have had the opportunity to sit and observe with each one of
23 the 60 people that was put on the witness stand here during the
24 course of this trial. So you need to think about all of those
25 things when you're assessing the person's credibility. Common

1 sense is also going to play a huge part in that assessment.

2 And then one other thing you're going to have to think
3 about, because some, not all, but some of the witnesses that
4 the Government put on were witnesses who had entered into some
5 sort of an agreement with the Government. Whether the
6 agreement was for a reduction of sentence, or a different type
7 of an offense, those were the types of witnesses that the Court
8 has instructed you to look at with more care and caution. And
9 that is entirely appropriate because, ladies and gentlemen,
10 when you're going through the testimony of those witnesses, you
11 already know that they have a very specific motive; and that
12 whatever that motive might be, you have to determine whether
13 you believe them standing alone, or whether their testimony has
14 been corroborated through the testimony of other witnesses,
15 through the testimony of evidence, and through the totality of
16 the entire case.

17 One of the things the instructions says is don't pay
18 attention to their testimony standing alone; in other words, it
19 should be corroborated. Right? Perhaps you'll believe it even
20 if it isn't corroborated, but pay close attention to it. And
21 that's entirely appropriate.

22 I submit to you, ladies and gentlemen, that each of
23 the witnesses that you've heard from in this witness box that
24 was provided with some sort of an agreement or some sort of a
25 benefit, their testimony does not stand alone. Their testimony

1 was supported by 59 other people, slews of physical evidence,
2 wiretap calls, surveillances, audio recordings, you name it.
3 We've put a huge plethora of evidence before you from which you
4 can draw to determine whether or not you believe what each
5 witness told you.

6 And I would encourage you, as you go through this
7 process of assessing the testimony of those individuals, weigh
8 it, compare it, and come to your own conclusion. And I further
9 submit to you, ladies and gentlemen, that when you do that, you
10 will see that their testimony doesn't stand alone. So take
11 that into account when you're making that assessment.

12 One of the things that I just told you in the center
13 of the witnesses that the Government has put on, or the
14 evidence that the Government put -- has put on, are people who
15 are what I would say are insiders. People who were actually
16 patched, full-patched members of the Devils Diciples. Some for
17 a period of months; others, for a period of many, many, many
18 years. And those witnesses, a variety of ages and experience
19 levels coming from different states, came in and talked to you
20 about their experience with the Devils Diciples as insiders.

21 Surrounding that circle are what's called associates,
22 old ladies, prospects or hang-arounds. It's hard to say "old
23 ladies." But old ladies, prospects and hang-arounds. You're
24 familiar with those terms. But those are folks that sort of
25 hover on the fringes of those insiders. Those are individuals

1 that, one could argue, based again on the testimony that you've
2 heard and the evidence that you've seen, they come and go
3 within this enterprise. They are involved in certain
4 activities. They are exposed to certain activities. They see
5 certain things. They hear certain things. And so they are
6 closest to that inner circle or that surrounds this
7 organization, the Devils Diciples Motorcycle Club. And you
8 heard from a fair variety of those folks.

9 The next circle are citizens. They are one step
10 removed. They might attend parties. They may come and fix the
11 plumbing; I don't know if that happened. I'm saying there's
12 somebody else that's not connected to this enterprise
13 necessarily. They are farther removed. And then finally, law
14 enforcement is at the outer edge of this circle.

15 Nevertheless, you have heard from witnesses and
16 individuals in all four categories. And so you do have a
17 fairly full toolbox from which to draw when you go back in that
18 jury room and start weighing and assessing and determining what
19 you believe and what you don't believe.

20 Now, the Judge gave you instructions. I'm going to
21 begin with the last one, which is Count 37, because it's the
22 easier one from the point of view of explanation. It's kind of
23 out of order and I'm going to be going out of order here, but
24 I'm hoping that there's a method to this madness.

25 So there are three elements. The Court has already

1 instructed you as to these three elements. And, ladies and
2 gentlemen, I submit to you that two of those elements are off
3 the table. They have already been agreed upon and the parties
4 have said we stipulate in S-16 and S-17 as to the first and the
5 third elements. The first element being that the defendant is
6 a convicted felon. We're talking about David Drozdowski. And
7 there is a stipulation in which that the parties agree that
8 that fact has been proved to you.

9 The third element is the ammunition at issue, traveled
10 in interstate commerce before the defendant possessed it. That
11 is the corrected stipulation S-16, which we also signed, along
12 with the defense. The parties agreed to it. So I submit to
13 you, based upon these two stipulations, you can find that the
14 Government has proved beyond a reasonable doubt that the first
15 and third elements have been met.

16 So really, what's the issue? Whether or not the
17 defendant, after his felony conviction, he possessed the
18 specified ammunition. So that's really the only issue, I
19 submit to you, ladies and gentlemen, that you need to assess
20 when making a determination whether or not the Government has
21 met its burden of proving to you that essential element beyond
22 a reasonable doubt.

23 How do we do that? All right. One way, one factor
24 that you can take into consideration in determining whether or
25 not the defendant possessed this firearm is what's contained in

1 this photograph right here. You've heard testimony from Lori
2 Maday. I believe she took that photograph -- if not, it came
3 from her camera -- in which the defendant David Drozdowski, who
4 is pictured with the bandana in the center of that photograph
5 and is pointing to, and the testimony was real firearms --
6 towards the person in the camera. That's something that you
7 can take into account.

8 Second, the ammunition at issue here, ladies and
9 gentlemen, was found inside of his trailer that he shared with
10 Lori Maday. There was ammunition in a closet, like a
11 linen-type closet. And there was also ammunition on a display
12 case in the living room.

13 Remember what the Judge told you about possession.
14 There is possession that's actual possession, and then there is
15 constructive possession. Something that we have constructive
16 possession over, we can control that item even if we're not
17 actually possessing it. Just like I did with this firearm.
18 You don't have to buy it to possess it, right? It could be
19 something that you possess with someone else.

20 I submit to you, ladies and gentlemen, that the
21 evidence has shown and proved beyond a reasonable doubt that
22 the ammunition at issue here was possessed by David Drozdowski
23 and his girlfriend inside of the residence that they shared,
24 both the rifle ammunition and the shotgun shells. And that
25 element -- that charge has been proved to you beyond a

1 reasonable doubt.

2 And this is really how it works. You go through each
3 count, you look at the elements, you read the instructions
4 about the various definitions that might apply, and then you
5 talk about and determine what facts, if any, support each of
6 the various elements.

7 Moving on, we've talked a lot about conspiracy. And
8 just so that we're clear, once again, the gambling conspiracy
9 and the conspiracy to suborn perjury and obstruction of
10 justice, and that's the one that relates to Victor Castano and
11 Keith McFadden and Stella Herron, those are the two that
12 require an overt act.

13 The overt acts are alleged in the indictment. You
14 guys have a copy of that indictment. There are a number of
15 overt acts that are contained within each of those two counts.
16 We only have to prove one conspirator did one in furtherance of
17 the conspiracy. Okay? And I'm going to get to those
18 specifically.

19 Next slide.

20 Now, I want to talk with you about RICO. Very early
21 on, this morning, the judge gave you instructions as to the
22 RICO charge. The RICO charge, the substantive RICO charge, is
23 not charged in this case. In other words, substantive RICO is
24 not charged. It's a conspiracy to commit this crime. It's an
25 agreement to commit this crime. But you can't understand that

1 agreement if you don't understand the substantive charge.

2 So what I'm going to do is I'm going to talk with you
3 about each of these various elements. It is going to be
4 important as I go through my closing with you to keep in mind
5 that the Government proves way more than it's required to
6 prove. I'm going to say it again. We often prove, and it's
7 the Government's contention in this case, we have proved way
8 more than the law requires us to prove. It's a heavy burden
9 that the Government bears to prove each and every element of
10 each charged offense beyond a reasonable doubt. We don't shirk
11 our burden. We carry our burden. But don't hold us to a
12 higher burden is all I'm saying. Look at the elements; apply
13 them to the law.

14 So one of the ways in which a conspiracy can be proved
15 is with evidence that the objects of the conspiracy actually
16 occurred. Right? Some of the best evidence that we have that
17 someone agreed to do something is when that thing actually
18 happens. So once again, we're only required to prove the
19 agreement. But sometimes the best evidence of that is the
20 results actually occurred. So I'm going to try to keep that
21 distinction for you, but keep that in your mind. Five elements
22 of substantive RICO. And the conspiracy is also factored into
23 the instructions that are listed on this screen.

24 What are those? There has to be an enterprise. There
25 has to be an interstate commerce component. There has to be --

1 a conspirator has to be associated with the enterprise. A
2 conspirator has to conduct or participate in the conduct of the
3 affairs of the enterprise. And a conspirator has to
4 participate in the conduct of the affairs of the enterprise
5 through a pattern of racketeering activity. Now, it reads a
6 little differently than what I just said to you because of that
7 conspiracy umbrella, agreement umbrella, but that's really what
8 we're talking about here, those five things.

9 The evidence that was presented through nearly all the
10 witnesses related to one or more of those elements, whether it
11 was evidence about the way in which the enterprise was created
12 or how it functioned or what the purpose of it, or the
13 longevity of it, all of those various factors, whether there
14 was evidence presented about interstate commerce, how people
15 were associated with the enterprise, who conducted or
16 participated in the affairs in the enterprise, what the affairs
17 of the enterprise were, and what the pattern of racketeering
18 activity was. So let's go through each one in a little bit
19 more depth.

20 The first element is the enterprise. An enterprise is
21 a group of individuals associated in fact, associated together
22 for a common purpose. And there are three structural features.
23 We just talked about them very briefly. There has to be a
24 purpose, there have to be relationships among those associated
25 with the enterprise, and there has to be longevity sufficient

1 to permit the associates to pursue the enterprise's goals or
2 purpose.

3 Here, the Government contends that the enterprise is
4 the Devils Diciples Motorcycle Club; that this is an enterprise
5 that is comprised of a group of individuals who are, in fact,
6 associated, in fact, and they function together as a continuing
7 unit for the common purpose of achieving the objectives of the
8 enterprise.

9 So, what evidence do we have that the Devils Diciples
10 Motorcycle Club met those three requirements? Let's talk a
11 little bit about structure. You've heard testimony about the
12 fact that there are chapters all over the country; that there
13 are state chapters, that there are local chapters, and that
14 they span, you know, in various areas across the nation. In
15 fact, there may have been some evidence about other chapters
16 that are outside of the country as well.

17 I want to talk to you about the structure within each
18 chapter. There is a structure within the, within the chapters
19 that exist. There are various roles that various individuals
20 play within each chapter, within each state and, of course,
21 nationally. There are people that are known as bar stewards
22 and there are warlords and there are enforcers and treasurers
23 and vice presidents and presidents. And those designations
24 have specific roles that they play.

25 You've heard testimony from a number of witnesses who

1 talked about "black eyes," giving black eyes, right? That was
2 a job that was typically reserved for the enforcer or the
3 warlord. Those two terms sometimes being synonymous and
4 sometimes not being synonymous, but certainly being related in
5 their job description, for lack of a better term.

6 You've heard about road captains, who are supposed to
7 help the caravan of motorcycles or vehicles go from one
8 location to another on a run. That's their job. Warlords take
9 care of security. Chapter presidents, they give the orders.
10 Treasurers take in monies and pay various bills that are due,
11 whether it's the heating bill or the mortgage or whatever it
12 is. So this is an enterprise that's comprised of a rigid
13 structure. There is a local structure, there is a state
14 structure, and then, of course, the national structure.

15 And of the defendants that are on trial here today,
16 you have the national president, Jeff Garvin Smith, also known
17 as "Fat Dog." You have the national vice president, Paul
18 Darrah, also known as "Pauli." And you have the national --
19 one national warlord, Cary Dale Vandiver, also known as "Gun
20 Control." So those are some of the individuals and some of the
21 roles that they have.

22 One of the jobs that the national president has is
23 to -- that he is -- one of his jobs is to be responsible for
24 the overall management of the Devils Diciples Motorcycle Club,
25 its members and chapters, including giving final approval over

1 activities that generally affect this organization, this
2 enterprise.

3 And I think that the evidence, ladies and gentlemen,
4 that you've seen and heard shows how much control Fat Dog
5 exerted over members of this enterprise. There have been
6 telephone communications, there have been -- there has been
7 witness testimony, all about some things that Fat Dog would
8 require them to report to him about or information that he
9 wanted to know about so that he could effect it.

10 Something pops in my head which I think really
11 exemplifies the amount of information control that this
12 individual, Fat Dog, this national president, exerted.

13 You may recall the testimony of Michael Mastromatteo,
14 also known as "Iron Mike." In his testimony, he talked about
15 being in New Mexico, I believe it was, with David Roberts. And
16 they had just -- he had just engaged in a drug transaction with
17 Sleepy. You guys remember Sleepy. There's a lot of talk about
18 Sleepy. He was the Arizona brother who later had some issues,
19 and was, you know, involved in drug trafficking with Iron Mike
20 for a period of years.

21 Well, when "Iron Mike," or Michael Mastromatteo, is in
22 New Mexico, he goes into a hotel room. When he gets in the
23 hotel room, he later finds out that police are there. He's not
24 sure who it is. They put guns to his neck, and he can't
25 breathe. You remember that whole thing. He didn't tell Fat

1 Dog about it and he got in trouble.

2 You may remember him telling you when he testified
3 that his failure to tell Fat Dog about this activity, in Fat
4 Dog's view, could have jeopardized the Devils Diciples'
5 enterprise, because the leadership needs to know what its
6 members are doing. They need to know who has been arrested.

7 According to Iron Mike, how does -- how can Fat Dog
8 coordinate these activities if he doesn't know that one of his
9 guys is in New Mexico getting pulled over by the police or
10 being stopped by the police and searched by the police. It's
11 an important piece of information. Iron Mike got in trouble
12 for not sharing it with the national president. So that's an
13 example of how the national president exerts his control in
14 this enterprise.

15 Now, staying on topic with some of the other members
16 and some of the other roles, you've heard a lot of testimony
17 from various individuals who, at one time or another, fit into
18 one of these categories, whether they were warlords or chapter
19 presidents or what have you. They talked about both their
20 participation in the activities, as well as the roles that they
21 played during the course of their membership in the enterprise.

22 One of the individuals that was mentioned as a western
23 boss was Little John. You may recall hearing about an
24 individual by the name of Little John being a western boss.
25 Later in the presentation, I'm going to show you and talk to

1 you a little bit more about who Little John was.

2 But some of the other chapter presidents whose names
3 were, were presented to you included Cuz and Riggs as being
4 chapter presidents in Arizona. Johnny Rotten as someone who
5 had been a chapter president in California. Gary Nelson and
6 Danny Burby had been chapter presidents at the Blue Water
7 clubhouse. Billy Wadd, who had been a chapter president at the
8 west side clubhouse. Charles Myatt, or "Snot," and John
9 Pizzuti, both who had been in leadership positions in the Utica
10 chapter. Magoo, who Jeff Arnold told you was the chapter
11 president for the Decatur chapter for that period of time when
12 the Decatur chapter was in existence. And Big Ron, who was the
13 chapter president of Anniston. And there were many, many
14 others.

15 As for the defendants on trial here, you've also heard
16 a lot of testimony about Scott Sutherland and what role he
17 played when he was a member of the Devils Diciples Motorcycle
18 Club. And we're going to talk about Scott Sutherland again
19 later in the presentation. But you've heard testimony that he
20 was an enforcer. He was a warlord/enforcer type, I think. But
21 that same role: Protection of the enterprise, wearing
22 firearms, providing security, guarding the national vice
23 president, those type of duties were among the duties that
24 Scott Sutherland performed in his role as an enforcer for the
25 Devils Diciples.

1 Now, other evidence that's been presented to you with
2 respect to the existence of the enterprise includes the fact
3 that these folks, in addition to having this organization of
4 leadership, and chapters and clubhouses, there's a requirement
5 to follow the bylaws and to abide by those bylaws, attend
6 church, and failure to attend church can result in fines or
7 black eyes. Pay dues. Give physical punishment, receive
8 physical punishment. Take motorcycles from people who leave
9 the club against their will. Obtain life insurance policies.
10 Pay into a funeral fund. And also, to, to provide and pitch
11 and kick in monies that they earn through various activities,
12 illegal activities, kick that money into the club. Whether
13 it's money, or drugs or what have you, there was a requirement,
14 an expectation, a demand that these individuals that were
15 members of this enterprise kick in for the benefit of the rest
16 of the club, kick in for brothers who needed, you know, a hand
17 with either money or with, with drugs.

18 One of the other things the Government is required to
19 prove is what the purposes were for this particular enterprise.
20 Some of the purposes that the Government has proved to you
21 beyond a reasonable doubt include that this was an organization
22 that was all about drugs, getting drugs, distributing drugs,
23 making money off of drugs.

24 And nobody is contending that these guys were rich and
25 that they made a lot of money. I think there's been ample

1 evidence about the fact this was not a particularly lucrative
2 enterprise for most of the individuals that were involved. It
3 certainly was lucrative for several of those individuals. But
4 the evidence has been shown to you, ladies and gentlemen, that
5 drug trafficking, drug use, drug sales, all of that is within
6 the fabric of this organization.

7 If you recall the testimony of Billy Wadd when he was
8 talking about the first time that he used meth, he was with
9 then national vice president Spike, who said to him, you're not
10 -- I'm sorry. Wrong quote. "If you're going to roll with me,
11 if you're going to be a Devils D disciple, this is what Devils
12 D disciples do," referring to meth. So the first time he used
13 meth, that's what he was told: This is what Devils D disciples
14 do. You.

15 Heard testimony from the Highwaymen guys that were up
16 here, Anthony Clark, also known as "Mad Anthony"; Gerald
17 Peters, also known as "Byrd," that their drug of choice was
18 cocaine, but the Devils D disciples, it was meth.

19 Now, ladies and gentlemen, of the various witnesses
20 that you've heard from in this case, over 20, over 20 of them
21 testified that the very first time that they tried meth was
22 with the Devils D disciples members. It was provided to them by a
23 member of the Devils D disciples.

24 Drugs and this club went hand in hand. Selling drugs
25 at runs, at parties, at the bar, at the clubhouse, inviting

1 citizens to come into the bar at the clubhouse, to come to
2 their parties, to buy raffle tickets, to come and, and
3 participate in all of their activities, drugs was an incentive.
4 Drugs was a lure. Drugs was how they drew people in. And
5 drugs is what they used to keep this organization going,
6 financially and otherwise. People came to these parties to get
7 drugs. They came to these parties to get drugs.

8 In order to get drugs, they either had to make them or
9 they had to get them from somewhere, and then they made money
10 on them. And I think, ladies and gentlemen, that of the 60
11 witnesses who testified here, there is ample evidence that that
12 is what the purpose of this enterprise was, or at least one of
13 them.

14 Other purposes was to enrich themselves, not just from
15 the drug activities but from gambling, theft and other types of
16 illegal activities. Gambling, slot machines, we've had a lot
17 of evidence about slot machines. We're going to talk a little
18 bit more about that when we talk about conspiracy and, and the
19 gambling activity.

20 But fundamentally, these are machines that are placed
21 in clubhouses all across the United States where the Devils
22 Diciples have a chapter. Citizens, again, encouraged to come
23 to their parties, encouraged to come to their bars: Come in,
24 have a drink, buy a drink. Here is some meth. Buy some meth.
25 Here is a gambling machine, put your money in. And when the

1 money would go into these machines, the money would be
2 distributed among the guy who took care of the machines and the
3 rest of the club. And that money was used, again, to keep this
4 club going.

5 Nobody claims that this club made millions and
6 millions of dollars off this activity. Nobody makes that
7 assertion here, ladies and gentlemen. But what is clear is
8 that these activities provided the fuel to keep this lifestyle
9 going. This is how they lived. And I think the evidence has
10 supported that.

11 Another aspect of, or another purpose that this
12 enterprise has was to enforce their authority through
13 discipline and to protect and promote and enhance their
14 authority with their reputation for violence through threats,
15 intimidation, weapons and a cultivation for being a violent and
16 powerful club. That was an important purpose here. And a lot
17 of the acts that they committed, particularly those acts that
18 involved violence, were directed towards that particular
19 purpose.

20 They got to protect themselves. They are the Devils
21 Diciples. They wear a certain patch. Okay? You can't allow
22 people to disrespect that patch. Whether they are women,
23 whether they are guys who are wearing rock band jackets, what
24 have you. Individuals that display any sort of a challenge or
25 disrespect to the territory, the power or the authority of this

1 club is going to be dealt with. And so to promote that
2 purpose, to promote that goal, a number of acts of violence
3 were engaged in by members of this organization, by members of
4 this enterprise. And I'm going to talk a little bit more about
5 that with some specificity later.

6 They had, they had another purpose, and that was to
7 maintain territory. You heard a lot of testimony from a number
8 of people about how important that territory was to them. You
9 can't allow another club to impinge, infringe on your
10 territory.

11 And similarly, when you take a little foray into an
12 area you're not supposed to go into, let's say the west side of
13 Detroit where the Highwaymen, as you heard testimony from both
14 the Highwaymen and Billy Wadd and some others -- if this club
15 took a foray into the territory that belonged to another club
16 or set of clubs, they might meet some resistance.

17 Remember the Jokers coming in and the conflict that
18 ensued between the Jokers, the Devils Diciples, and the
19 Highwaymen that resulted again in acts of violence, firearms
20 being discharged.

21 And finally, protect the organization. Protect the
22 organization. Protect the organization from the law, from the
23 Feds. Okay? That was a very important purpose. A lot of
24 criminal activity was centered around this particular purpose.
25 "The Feds are watching. Be sharp."

1 The Feds are watching, be sharp. So those were some
2 of the -- yeah, we're right there. Sorry. I tend to get ahead
3 of myself. Sorry.

4 So, "the Feds are watching," you know, this is
5 something that was very, very important. Lie if you have to.
6 Whatever it takes. We're going to intimidate witnesses. We're
7 going to root out snitches. We're going to do whatever it
8 takes. We're going to fabricate, you know, testimony or what
9 have you, all with the goal of protecting this enterprise,
10 protecting the enterprise from law enforcement.

11 So those are the purposes that the Government contends
12 we have proved to you beyond a reasonable doubt.

13 And ladies and gentlemen, I want to move now to the
14 second -- well, I guess I missed my two slides. Okay. Let's
15 go back because I want to see what I missed.

16 Okay. So one of the things that in order to become a
17 member, we all know some people have to prospect. Others,
18 don't have to prospect. Right? That seemed to be something
19 that you heard testimony about, I didn't have to prospect. I
20 got to come into this club without having to be a prospect.
21 Right?

22 Membership in the club is a coveted item for people
23 within this world. Okay? In order to become a member, you may
24 have to become a prospect. In order to become a prospect,
25 there apparently is a prospect agreement. And the agreement

1 that, ladies and gentlemen, you heard testimony about, Special
2 Agent Fleming and other law enforcement personnel seized this
3 agreement and typed similar agreements from various locations
4 within the Devils Diciples' search warrants that were
5 conducted. And in this agreement, it talks about what you need
6 as a prospect.

7 Some of them have been highlighted for you.
8 Prospect's sponsor will be responsible for the prospect, show
9 him the ropes. Prospect will respect and answer to all patch
10 holders. Prospect must have 100 percent full-patched vote.
11 Prospect will not attend old or new business discussions or
12 meetings. And if a prospect leaves the club, a minimum of \$100
13 fine is imposed. Reason for leaving and punishment is left up
14 to the discretion of the chapter.

15 By the way, there's no mention of the motorcycle
16 having to stay with the club in the prospect agreement. And
17 that's, again, another subject we're going to talk about later.

18 But while we have that agreement up, here are some of
19 the rules that apply to a prospect. It's a coveted thing to
20 become a full-patched member within the outlaw motorcycle club
21 community. Many of the witnesses that got up on that witness
22 stand had been proud members of the Devils Diciples. They were
23 very, very proud of their membership in that organization, in
24 that criminal enterprise.

25 What else did I miss?

1 That's what a full-patched member looks like. I
2 talked to you about some of the various chapters. That's just
3 a display of some of the photos that you have seen during the
4 course of the trial of individuals at various locations.

5 Next slide, please.

6 This placard was on the wall of the Mount Clemens
7 clubhouse, the one on Gratiot, We talked a lot about it. That
8 was the mother chapter, the headquarters of the Devils Diciples
9 Motorcycle Club. And this, this phrase, "One for all, all for
10 one, Forever, Together, Wherever" and "I believe," some
11 iteration of those three phrases are found littered throughout
12 letters that individuals have written, documents that have been
13 seized, on the colors themselves. But what it really
14 represents is the motto, if you will, of this particular
15 organization, and that is "One for all, all for one, Forever,
16 Together, Wherever"; and "I believe." Again, common purpose.

17 I'm going to move on now to the second element, which
18 is interstate activities, economic activities in interstate
19 commerce. This one is a pretty straightforward one, ladies and
20 gentlemen. The instructions are very, very clear. Here are
21 some of the ways in which the Government, I submit to you has
22 proved this element to you beyond a reasonable doubt.

23 You have heard testimony about all of the activities
24 that are referenced on this particular screen. And this one is
25 cut off, so I direct you to the larger screen. That one is not

1 complete.

2 Drug activity. There has been a tremendous amount of
3 drug activity and testimony about drug activity between
4 Arizona, California, Michigan, Ohio, Indiana, Alabama, and
5 elsewhere. People who have been driving drugs across the
6 country, people who have been bringing ephedrine or precursor
7 pills, specifically Karen Casey talked about the fact that she
8 would obtain those pills from a warehouse. She would put them
9 in, inside of gallon Ziploc bags and she would mail the pills
10 from Ohio to, all the way out to California, where those pills
11 would then be turned into methamphetamine in pound quantities.
12 And that those drugs would then be put on her body, taped
13 around her body. And she would physically transport them via
14 airplane back into Ohio.

15 You heard testimony that Billy Wadd went to
16 California, met with Holiday. Received a package of
17 methamphetamine, put that methamphetamine in his wallet, got on
18 an airplane, took something to calm his nerves, woke up in
19 Michigan and handed that methamphetamine over to Spike.

20 You heard testimony from Iron Mike that he traveled
21 from Michigan all the way down to Arizona, and perhaps to New
22 Mexico and other places as well. On the way there, he would
23 take money, get drugs, bring the drugs and transport them back.

24 You heard testimony from others, and some will come
25 into my mind in a second as I'm talking to you. But you heard

1 testimony from so many of these folks that talked about their
2 various trips between states.

3 Jennifer Cicola, she told you that she traveled with
4 Pauli Darrah and she traveled with Sonny from Michigan all the
5 way down to Ohio to see Lightning. Lightning gave them a bag
6 full of meth. They drove it back up to Michigan. They gave it
7 to Detroit Red. These are some of the instances, and there are
8 many, many more. When you go back into the jury room, you may
9 recall through your own recollection, perhaps your notes and
10 your own recollection talking about this, the number of times
11 that drugs were transported by members of this enterprise, and
12 associates, members and associates, to various locations across
13 the country.

14 The same is true for precursor chemicals. You may
15 recall testimony about Gun Control transporting red phosphorus,
16 that precursor chemical, inside of the side-view or rearview
17 mirror of the vehicle and driving it from California to
18 Michigan. And then he and Gadget took that red phosphorus and
19 drove it to Alabama, all for the purposes of making meth.

20 So there's been ample testimony, ladies and gentlemen,
21 about each of these various categories, money orders going back
22 and forth, cash going back and forth, shipments, mailings and
23 things of that nature. I submit to you that, ladies and
24 gentlemen, this element has been amply proved to you beyond a
25 reasonable doubt.

1 Moving on to element 3, the third element that the
2 Government must establish beyond a reasonable doubt is that a
3 conspirator, and it could include the defendant but it need
4 not, was either employed by or associated with the enterprise.
5 And really, "associate" means to join often in a loose
6 relationship with a partner, a fellow worker, a colleague, a
7 friend, a companion or an ally.

8 When you join with members of the enterprise to aid or
9 further the activities of the enterprise or you conduct
10 business with or through the enterprise, you are associated
11 with the enterprise.

12 Why is this important? Why do we care about this? We
13 care about this, ladies and gentlemen, because just because you
14 are not a member of the Devils Diciples Motorcycle Club does
15 not mean that you are not associated with the enterprise and
16 involved in the RICO activities. Just because you're not a
17 member does not mean that you're not associated with or not in
18 violation of the RICO statute.

19 So the enterprise is the Devils Diciples Motorcycle
20 Club. And people who are members of that enterprise and who
21 conspire and agree and meet all of these requirements that we
22 are going through right now, those individuals, I submit to
23 you, ladies and gentlemen, if we have proved that to you beyond
24 a reasonable doubt, then they are in violation of the RICO
25 statute and the conspiracy to commit RICO.

1 But there are other individuals who, as I've just
2 described, can also be associated. You need not only be a
3 member in order to be associated with the enterprise.

4 The fourth element, ladies and gentlemen, is to
5 conduct or participate in the conduct of the affairs of the
6 enterprise. The defendant has to agree that a co-conspirator
7 would conduct or participate in the conduct of the affairs of
8 the enterprise. It's one or the other. We don't have to prove
9 both. Okay? If you participate, that's all we need to show.
10 If the person did not actually participate and they conducted,
11 then we have to show other things. But we don't have that
12 situation here.

13 All the members and all of the defendants on trial
14 here actually participated in the activities of the affairs of
15 the enterprise. The evidence has shown to you beyond a
16 reasonable doubt through the testimony of the witnesses and all
17 the physical evidence that we've presented to you that they
18 all, each of them participated.

19 However, even if they had not, if they conducted the
20 affairs of the enterprise, we would have met our burden with
21 respect to this particular element of the RICO conspiracy
22 charge.

23 How? Because if you don't personally participate, the
24 law says that an enterprise is operated not just by upper
25 management, but by low-level participants in the enterprise who

1 are under the direction of upper management.

2 So, to give an example, someone who gives the orders
3 but doesn't dirty their hands in the various activities is as
4 equally guilty as the guy who is doing the stuff, the
5 lower-rung participant. It's a common enough idea. All of
6 you, I am sure, are familiar with that idea. And so that's
7 really what the genesis of that, that portion of it is. But
8 you need not be concerned about that in this instance, because
9 I submit to you they all participated in this particular case,
10 and the evidence will show that.

11 The fifth element that the Government must prove is
12 that a conspirator would engage in a pattern of racketeering
13 activity. Now, we get to that racketeering act thing again.
14 We need two racketeering acts within ten years of each other,
15 okay? Ten years of the prior one. And then there are three
16 components to this particular element.

17 One, that the defendant agreed that the -- that a
18 conspirator did or would intentionally commit or cause or aid
19 and abet in the commission of two or more of the racketeering
20 acts. Those were the long list of offenses. Some were state
21 law offenses, murder, extortion, kidnapping, yada, yada. The
22 rest of them were federal offenses, obstruction of justice.
23 The judge went through all of those with you.

24 If you find that two, any two racketeering acts were
25 committed or would have been committed -- we'll talk about that

1 a little bit later -- but were committed or would have been
2 committed, we've satisfied this element.

3 So, two instances of drug trafficking, two instances
4 of the manufacture of drugs works. That's enough. One
5 instance of the manufacture of drugs, one instance of the
6 distribution of drugs. Enough. Obstruction of justice,
7 witness tampering. Enough. You get it. That's all we need to
8 prove with respect to the two acts, as long as the time period
9 is complied with.

10 And again, when you read those instructions, hopefully
11 this makes more sense to you. We only need to prove two.
12 Again, we have a heavy burden. We often prove more than what
13 we need to prove. Don't hold us to that higher burden. Don't
14 go back there and start arguing over ten of the racketeering
15 acts when we need only have proved two beyond a reasonable
16 doubt. Hold us to our burden but just our burden.

17 There has to be a nexus to the enterprise, and the
18 activity has to be related. The judge talked about it, about
19 that at great length. And I think that the best way to explain
20 that is when we start going through the various racketeering
21 acts, and criminal acts that we've put proof on, you're going
22 to be able to see whether an activity was related or not,
23 whether there was a nexus or not. We're not talking about
24 completely unrelated events that have nothing to do with the
25 Devils Diciples.

1 What would be an example of that? Let's say that
2 someone went out and committed a crime that was not anywhere
3 near this. Let's say that somebody went out and committed a
4 crime that had nothing to do with this enterprise whatsoever,
5 its members, its purposes, its goals, and wasn't involving this
6 at all. And the Government could not prove that it was related
7 to this enterprise. That's what we're talking about. We
8 haven't put any of that type of evidence on, ladies and
9 gentlemen, I submit to you, and so you need not worry about
10 that.

11 But as I go through the various racketeering acts, I'm
12 going to spend a little time and show you how it was related to
13 the enterprise. So that particular component, you're going to
14 see that more and more as we talk more in specifics.

15 And three, racketeering activity has to extend over a
16 substantial period of time, or pose a threat of continued
17 criminal activity. We have both here. The indictment talks
18 about activities that this enterprise was engaged in from the
19 early 1990s, up and through the date of the indictment, which
20 was June of 2012. So the, the time period that this enterprise
21 has been in existence satisfies the longevity requirement.

22 In addition, the testimony that you heard,
23 particularly from Special Agent Fleming about some of the more
24 recent activities, the meth manufacturing that was going on in
25 June of 2012, for instance, the assault that occurred at the

1 New York New York bar with Mr. McClure, for instance, those
2 type of activities show that this activity would have continued
3 but for the indictment in this case. So we've satisfied both
4 of those particular prongs. We need only satisfy one. But
5 that's really what that talks about.

6 So finally, ladies and gentlemen, how does this all
7 relate to the essence of the RICO conspiracy? The Judge has
8 instructed you that, again, even though racketeer --
9 racketeering acts, we have evidence that they occurred, it's
10 the agreement to commit them that matters. It is the agreement
11 that really is at issue here.

12 Your Honor, I think this may be a good place to stop
13 before I go into another area.

14 THE COURT: That will be fine. The timing is suitable
15 and you can have a seat.

16 MS. MOHSIN: Thank you, Judge.

17 THE COURT: You will prepare to put your materials
18 away, ladies and gentlemen, in the jury room overnight. And
19 we'll go on the ordinary full-day schedule tomorrow as we did
20 today. We will begin at nine a.m. tomorrow morning. There's
21 nothing pending, nothing holding us up. And Ms. Mohsin will
22 conclude her comments over the next -- over the morning hours,
23 I would imagine. And then we'll recess on an as-needed basis,
24 one mid-morning recess, a noon recess and afternoon recess.

25 We'll begin to hear the closings of the defendants'

1 attorneys tomorrow as well, I am reasonably sure, and
2 continuing on then the following day as well, and concluding
3 then, eventually getting into deliberations, I would imagine,
4 near -- at or near the end of the week.

5 So we can recess now. Put the matter off your minds.
6 Don't try to fill in the blanks in the meanwhile. Get a good
7 night's sleep. We'll see you tomorrow for the commencement of
8 court at nine a.m., and you may rise and leave.

9 Thank you.

10 (Jury out, 4:38 p.m.)

11 THE COURT: All right. The jury is absent and you may
12 be seated. The matter is ready for recess.

13 Mr. Satawa, though, had pointed out something that he
14 wanted to suggest in the way of a correction for instructions.

15 I'd ask you to discuss that with government counsel,
16 Mr. Maiatico -- Mr. Satawa, and see if there's a stipulation
17 available to do whatever re-instruction or correction might be
18 suggested by you. The possibility of agreement needs to be
19 explored. And there's plenty of time, it seems to me, to do
20 that this afternoon or tomorrow. So if there's an agreement,
21 I'll certainly correct whatever is necessary. And if there's
22 not, I would at least like to have the Government's thinking on
23 whatever it is that you need to suggest before we get into it
24 in-depth.

25 Is there anything else for the record then for the

1 Government before we recess?

2 MS. MOHSIN: Judge, I don't know if you were going to
3 handle the issue with the juror?

4 THE COURT: Yes. What I'm going to do is basically
5 she's not going to show up tomorrow. We're going to contact
6 her by phone. And she's -- without, in other words, revealing
7 the arranged absence or the reason for it, so forth, and thus
8 not to start the dominoes falling over.

9 MS. MOHSIN: Yes.

10 THE COURT: I don't want to encourage, unknowingly,
11 other jurors trying to get themselves in the same position to
12 leave early. And we don't, we don't want that. We want a
13 full complement, more than full complement through the end of
14 discussions. So we have her contact number. And my case
15 manager is going to call her. I'll speak with her, I'll thank
16 her. I'll express the thanks of all of the attorneys on both
17 sides for her service and just ask her to not be in touch with
18 any of the deliberating jurors, in other words, the same kind
19 of cautions that I gave to the other excused jurors.

20 If you would like me to do that on the record, I can
21 have my court reporter recording those things if anybody would
22 wish to have that done. I'd be happy to do it. I don't think
23 that it's necessary, but if anybody thinks differently, please
24 speak up.

25 Anybody on the Government's side?

1 MS. MOHSIN: No, your Honor.

2 MS. STOUT: No, your Honor.

3 THE COURT: Does anyone on the defense side want that
4 done on the record particularly?

5 MR. SABBOTA: No, your Honor.

6 MS. MACERONI: No, your Honor.

7 THE COURT: Okay. So I'll handle it in a gentle
8 manner. And again, I'll express the thanks of all the
9 attorneys here for her diligence and her attention.

10 With nothing else to handle on the record?

11 All right. There's nothing else, then. We shall
12 recess this case. I have another case to take up. So you can
13 please absent yourselves.

14 (Recess taken, 4:41 p.m.)

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CERTIFICATE OF REPORTER

As a Federal Official Court Reporter for the United States District Court, appointed pursuant to provisions of Title 28, United States Code, Section 753, I do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

Dated this 21st day of January, 2015.

s/ Christin E. Russell
Christin E. Russell
RMR, CRR, FCRR, CSR
Federal Official Court Reporter.